

## **Form Instructions for Completion of the NEMB Notice of Exclusions from Medicare Benefits (CMS-20007)**

The NOTICE OF EXCLUSIONS FROM MEDICARE BENEFITS (NEMB) form advises beneficiaries, before items or services that are not Medicare benefits are furnished, that Medicare will not pay for them. NEMBs allow beneficiaries to make informed consumer decisions about receiving items or services for which they must pay out-of-pocket and to be more active participants in their own health care treatment decisions. The NEMB may be used, on an entirely voluntary basis, by physicians, practitioners, suppliers and providers to advise their Medicare patients of the services that Medicare never covers, for which it is not appropriate to use Advance Beneficiary Notices (ABNs, form CMS-R-131), Home Health Advance Beneficiary Notices (HHABNs, form CMS-R-296), Hospital-Issued Notices of Non-Coverage (HINNs), or SNF Notices Of Non-Coverage (NONCs).

The NEMB form CMS-20007 is available online in English and Spanish at the CMS Beneficiary Notices Initiative webpage at <http://cms.hhs.gov/medicare/bni/> and also at the CMS Medlearn website <http://cms.hhs.gov/medlearn/refabn.asp> at the Advance Beneficiary Notice Quick Reference Guide webpage.

Physicians, practitioners, suppliers and providers may use notices of their own design rather than the NEMB form. Some professional associations, with the assistance and approval of CMS, have developed service-specific NEMB type notices to advise Medicare beneficiaries of the limits of Medicare coverage for certain items and services. Those service-specific notices, which are not government notices but proprietary notices of the authoring associations, are also available at the links given above.

The use of the NEMB is at your discretion. The imperative voice in the form instructions is premised on your voluntary decision to use the standard form CMS-20007 NEMB.

### **Instructions for Completion of the NEMB (CMS-20007)**

#### **A. General Rules--**

1. Prepare and deliver to the patient (Medicare beneficiary), or person acting on his or her behalf, an NEMB when you know Medicare will not pay for, or will not continue to pay for, items or services on the basis of any categorical statutory exclusion listed in the third box on the form. In this case, insert a mark in check-off box #2. Do NOT use an NEMB for either of the following two categorical exclusions that trigger statutory protections:
  - a. The service may be denied as "not reasonable and necessary" ("medical necessity") - §1862(a)(1) of the Social Security Act.
  - b. The service may be denied as "custodial care" - §1862(a)(9) of the Act.
2. Prepare and deliver to the patient (Medicare beneficiary), or person acting on his or her behalf, an NEMB when you know Medicare will not pay for, or will not continue to pay for, items or services on the basis of any technical statutory exclusion, that is, for any failure to meet completely the statutory definition of a Medicare benefit. In this case, insert a mark in check-off box #1 in the second box on the form. Do NOT use an NEMB for any of the following six technical exclusions that trigger statutory protections:
  - a. The home health care patient does not need intermittent skilled nursing care - §1814(a)(2)(C) [Part A] or §1835(a)(2)(A) [Part B] of the Social Security Act.
  - b. The home health care patient is not confined to the home - §1814(a)(2)(C) [Part A] or §1835(a)(2)(A) [Part B] of the Act.

- c. The patient in hospice is found not to be terminally ill – §1861(dd)(3)(A) of the Act.
  - d. The patient received a prohibited telephone solicitation ("cold call") in the case of medical equipment & supplies - §1834(a)(17)FIRST(B) of the Act.
  - e. The supplier does not have a supplier number, in the case of medical equipment & supplies denials - §1834(j)(1) of the Act.
  - f. The supplier has not obtained a required advance coverage determination in the case of medical equipment & supplies denials – §1834(a)(15) of the Act.
- 3. The readability of the NEMB facilitates patient understanding. It is best to avoid the use of italics or any font that is difficult to read. A readable font in the font size range of 10 point to 12 point, is highly recommended. Black or dark blue ink on a white background is highly recommended. A visually high-contrast combination of dark ink on a pale background is best. Use of low-contrast combinations and block shading is discouraged as they are hard to read. If insertions are handwritten, they need to be legible. Both the originals and copies of NEMBs need to be legible and high-contrast. When Spanish language NEMBs are used, it is best to make insertions on the form in Spanish to the best of your ability; where that is impossible, you should take other steps as necessary to ensure that the patient understands the notice.
  - 4. If you use the approved NEMB form CMS-20007, you may customize the header and/or the footer, but do not modify the published notice. If you wish to use the NEMB in whole or in part to design your own notice, that is permissible, but you must delete "Form No. CMS-20007" from the bottom of the form.
  - 5. Sections B through E, inclusive, of these instructions are applicable to the use of the standard NEMB form CMS-20007.

**B. Header--**

- 1. The header of the NEMB, above the title "NOTICE OF EXCLUSIONS FROM MEDICARE BENEFITS (NEMB)," has been left blank for the discretionary use of form users. Inserting material in the header is not required. You may customize the header for your own use. The guidance in paragraphs A.3. and B.2. is meant to be informative, not directive.
- 2. The NEMB's header may include your identifying information, including your name, address and telephone number, and/or other information at your discretion. You may elect to include your logo (if any). The following elements may be included in the header, but you may customize the header, or not, according to your particular needs.
  - a. Date--The date on which you gave the notice personally to the patient or person acting on his or her behalf. Where personal delivery is not possible, you may include both the date you notified the patient by telephone and the date you mailed the notice.
  - b. Patient's Name--The name of the patient (rather than the name of an authorized representative).
  - c. Medicare # (HICN)--The patient's health insurance claim number.
  - d. Physician--The attending physician's name and telephone number.

C. Explanation Box--Insert in the space provided in the first box on the form, following "Medicare will not pay for:" the description of the items or services about which notice is being given. You may also include here a reason for Medicare noncoverage.

1. In the case of the technical exclusion (Check-Off Box #1), inclusion of a reason is advisable since the Check-Off Box #1 explanation, "Because it does not meet the definition of any Medicare benefit", is very general. [EXAMPLE: "Medicare will not pay for: *your ambulance transport, because you could be transported by another means of transportation.*"]
2. In the case of the categorical exclusion (Check-Off Box #2), inclusion of a reason is of lesser importance since the checked-off exclusion will provide the basis reason for noncoverage; but additional explanation is permissible.

D. Check-Off Boxes--

1. When you give an NEMB because you know Medicare will not pay for, or will not continue to pay for, items or services on the basis of any technical statutory exclusion, that is, for any failure to meet completely the statutory definition of a Medicare benefit, insert a mark in check-off box #1 in the second box on the form.
2. When you give an NEMB because you know Medicare will not pay for, or will not continue to pay for, items or services on the basis of any categorical statutory exclusion listed in the third box on the form, insert a mark in check-off box #2 in the third box on the form. Also, insert a mark in the smaller check-off box to the left of the specific exclusion. If you wish to also circle the exclusion, or otherwise highlight it, that is permissible.

E. Footer--

1. The footer of the NEMB has been left blank for the discretionary use of form users. Inserting material in the footer is not required. You may customize the footer for your own use. The guidance in paragraphs A.3. and E.2. is meant to be informative, not directive.
2. The NEMB's footer may include a patient signature block, liability statement, and/or other information at your discretion. The following elements may be included in the footer, but you may customize the footer, or not, according to your particular needs.
  - a. Date--The date on which you gave the NEMB to the patient or person acting on his or her behalf and/or the date on which the patient, or person acting on his or her behalf, signed the NEMB. If personal delivery is not possible, you may include both the date you notified the patient by telephone and the date you mailed the notice.
  - b. Patient's Name--The name of the patient (rather than the name of an authorized representative).
  - c. Signature Line--The patient, or person acting on his or her behalf, may be asked or required to sign his or her name.